

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JAMES L. FISHER,

Petitioner,

vs.

DIANE SABATKA-RINE,

Respondent.

**4:22CV3123**

**MEMORANDUM AND ORDER**

This matter is before the Court on Petitioner's Motion to Submit Additional Records and Motion for Extension of Time, [Filing No. 15](#), and Respondent's Motion to Substitute Respondent, [Filing No. 16](#). For the reasons discussed below, the motions will be granted.

**I. MOTION TO SUBMIT ADDITIONAL RECORDS**

Petitioner seeks permission to submit additional records in support of his habeas claims because he contends that Respondent's Designation of State Court Records, [Filing No. 12](#), is incomplete. Specifically, Petitioner seeks to submit "several other pages that are relevant to Petitioner's plea, and sentencing proceedings" and identifies those pages as follows:

**1). Pages (#12, 37, 38, 39, 44, 45, 46, 47, 48, 52, and 53) is relevant to Petitioner's Ground I claim:** Ineffective assistance claims regarding no defenses, and his attorney's summary of the case which is relevant to Petitioner's claims that was not included.

**2). Pages (#5, 6, 7, 9, 14, 15, 17, 20, 22, 23, and 35) is relevant to** Grounds II and III of his Petition.

[Filing No. 15](#) (spacing and punctuation corrected) (emphasis in original).

The Court is uncertain as to what the page numbers listed by Petitioner refer. It appears Petitioner may be referring to page numbers in the Bill of Exceptions for Petitioner's plea and sentencing hearings in the state district court which Respondent included in the Designation of State Court Records at [Filing No. 12-12](#). To the extent Petitioner is referring to page numbers in the Bill of Exceptions, the Court advises Petitioner that all page numbers listed by Petitioner in his motion are contained in the Bill of Exceptions on file with the Court, as Respondent filed a complete copy of the Bill of Exceptions—consisting of 225 pages total—with the Designation of State Court Records. See [Filing No. 12](#); [Filing No. 12-12](#). As set forth in the Court's progression order, "Respondent is only required to provide Petitioner with a copy of the specific pages of the designated record that are cited in Respondent's answer and brief," [Filing No. 8 at 5](#), not complete copies of the records.

If Petitioner is referring to other documents that are not contained within the Designation of State Court Records, then the Court is not opposed to allowing Petitioner to submit such documents in support of his claims for federal habeas relief for this Court's review. See Brian R. Means, [Federal Habeas Manual § 5:10](#) ("Rule 7 does not require a litigant to secure a court order before submitting materials for the court to consider.") (citing [Shah v. U.S.](#), 878 F.2d 1156, 1162 (9th Cir. 1989)). Accordingly, the Court will grant Petitioner's request to submit additional records to the extent such records are not already contained within the Designation of State Court Records.

## II. MOTION FOR EXTENSION

Petitioner also requests an extension of time to file his brief in response to Respondent's answer and brief until after the Court rules on his request to submit additional documents. [Filing No. 15 at 1–2](#). Upon consideration, Petitioner's motion for extension is granted, and Petitioner shall have 30 days from the date of this Memorandum and Order to file and serve his brief in response.

## III. MOTION TO SUBSTITUTE RESPONDENT

Finally, Respondent has filed a motion to substitute Rob Jeffreys as the sole respondent in this action. [Filing No. 16](#). Rob Jeffreys became the duly appointed Director of the Nebraska Department of Correctional Services on April 17, 2023, and Diane Sabatka-Rine is no longer the Interim Director. Upon consideration, Respondent's motion is granted.

IT IS THEREFORE ORDERED that:

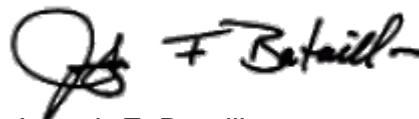
1. Petitioner's request to submit additional records, [Filing No. 15](#), is granted to the extent Petitioner may submit the additional records identified in his motion to the extent such records are not already contained within the Designation of State Court Records.

2. Petitioner's motion for extension of time, [Filing No. 15](#), is granted. Petitioner shall have until **May 25, 2023**, to file and serve his brief in response to Respondent's answer and brief. The Clerk of Court is directed to set a pro se case management deadline using the following text: **May 25, 2023**: check for Petitioner's brief.

3. Respondent's Motion to Substitute Respondent, [Filing No. 16](#), is granted. The Clerk's office is directed to update the Court's records to reflect that Rob Jeffreys is the sole proper respondent in this action.

Dated this 25th day of April, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

Joseph F. Bataillon  
Senior United States District Judge